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**SERVICE LEVEL AGREEMENT**

Between

**The University of the South Pacific**

**(“USP”)**

and

**(“Service Provider”)**

**For**

**Provision of Scheduled Inspections, Testing, Maintenance, and Repair Services of Generators**

**for**

**………………… Campus**

Name: USP RFT XXXX – Tender Description

Contract Number: CM XXXX

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# APPOINTMENT

* 1. USP issued an Invitation to Tender (ITB) under number RFT……../20…. (hereinafter referred to as the “ITB” and attached hereto as Annexure A) for the **Provision of Scheduled Inspections, Testing, Maintenance, and Repair Services of Generators for ……………..** (defined in this Agreement as “Services”).
	2. **“Service Provider”** means ……………………………………………………... a private company registered in accordance with the Laws of the Country where the services are to be provided, with registration number ………………………….. and its registered address at ………………...……………………….
	3. The Service Provider submitted a proposal (hereinafter referred to as the “**Service Provider’s Proposal and Price Template**” and attached hereto as **Annexure C**) to USP and USP has accepted the proposal following USP’s procurement process for such Services.
	4. USP therefore appoints the Service Provider on a non-exclusive basis, to provide the **Services for the USP’s Generators Systems** listed in **Annexure A,** according to the plan in **Annexure B** which the appointed Service Provider accepts subject to the terms and conditions of this Agreement**.**
	5. USP has endorsed the Service Providers proposed personnel detailed in **Annexure D**, to carry out all duties and responsibilities within the terms of this agreement.
	6. **Commencement Date** of this agreement is …………………………………….
	7. **Term of this Agreement.** This Agreement commences on the Commencement Date, notwithstanding the date of signature hereof and will continue in full force and effect for a period of ………………………………(months)
	8. In accordance with this agreement, the service provider has on or before the Commencement Date and for the duration of this Agreement, have and maintain in force **public liability insurance** in the amount of …………………………. to cover any claims, Losses and/or damages for which it is liable in terms of this Agreement. (Refer Indemnities and Insurance).
	9. **Contact Information**
		1. The Service Provider representative.
		2. Name…………………………………………………….
		3. Mobile Contact………………………………………….
		4. Email……………………………………………………..
		5. The Service Provider’s escalation channels:

|  |  |  |
| --- | --- | --- |
| Escalation | Contact Name | Contact Number |
| Helpdesk |   |   |
| Service Manager |   |   |

* + 1. The USP representative information and escalation channels.

|  |  |  |
| --- | --- | --- |
|   | Primary Contact Number | Secondary Contact Number |
| Escalation #1 |  |  |
| Phone Numbers |  |  |

# INTERPRETATION

* 1. The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
	2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings;
		1. **“Agreement”** means this Agreement including any annexures referencedherein.
		2. **“Amount at Risk”** means the maximum percentage (20%) of the ServiceProvider’s total invoice per service task, which may be at risk in respect of Service penalties imposed resulting from any Service Level Failures.
		3. **“Authorised Representative”** mean signatories authorised by USP and theService Provider respectively to sign the Agreement and any amendments or addenda on their behalf.
		4. **“Business Day”** means any day other than a Saturday, Sunday or publicholiday in the Country where the services are to be provided.
		5. **“Commencement Date”** means not later than 5 days after the last signature is affixed to this Agreement.
		6. **“Confidential Information”** means any proprietary and confidentialinformation or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which (i) is received by the Receiving Party from the Disclosing Party; (ii) is received by the Receiving Party from a Third Party acting on behalf of the Disclosing Party; or (iii) comes to the knowledge of the Receiving Party by any other means. Confidential Information includes such information whether marked as ‘Confidential’ or with a similar legend or not.
		7. Without limitation, the Confidential Information of USP will include the following;

this Agreement; and any other non-public information, regardless of whether such information is marked ‘Confidential’ or with another similar designation, including: USP Data; USP’s financial information; information regarding taxpayers/vendors; information regarding employees, independent contractors and suppliers of USP and governmental entities; processes and plans of USP and governmental entities; projections, manuals, forecasts, and analysis of USP and governmental entities; USP’s intellectual property or intellectual property licensed to USP or a governmental entity, and any other information of USP and governmental entities which would be deemed by a reasonable Person to be confidential or proprietary in nature.

* 1. Confidential Information will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; or (iii) the Receiving Party knew prior to receiving such information from the Disclosing Party; or (vi) develops independently without reference to the Disclosing Party’s Confidential Information (as established by documentary evidence). The onus will at all times rest on the Receiving Party to establish that such information falls within any such exclusion. Confidential Information will not be deemed to be within one of the foregoing exclusions merely because such information is embraced by more general information that is in the public domain or was already in the Disclosing Party’s possession.
	2. The determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.
	3. “Disclosing Party” means the Party who furnishes or otherwise makes available such Party’s Confidential Information to the other Party (including such other Party’s personnel or Third Party suppliers, as applicable) or on whose behalf such Party’s Confidential Information is furnished or otherwise made available to the other Party (including such other Party’s personnel or Third Party suppliers, as applicable).
	4. “Losses” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law.
	5. “Parties” means USP and the Service Provider and “Party” as the context requires, is a reference to any one of them;
	6. “Receiving Party” means the Party, other than the Disclosing Party, that receives disclosure of any Confidential Information;
	7. **“USP” means The University of the South Pacific, Established in 1968,** jointly owned by the governments of 12 member countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Samoa with campuses in all member countries, the main campus located in Laucala Fiji;
	8. “USP Data” means all information, whether or not Confidential Information, disclosed to the Service Provider by or on behalf of USP, and includes information derived from such information;
	9. “USP Representative” will be such Person as may be nominated from time to time by USP;
	10. “Service Provider” means the registered business named in this agreement, a private company registered in accordance with the Laws of the Country where the services are to be provided, with registration number as listed and its registered address as specified in this agreement.
	11. “Services” means the Provision of Scheduled Inspections, testing, maintenance and repair services of Generators System and associated equipment’s.
	12. “Signature Date” means the date of signature of this Agreement by the Party last signing;
	13. “Termination Date” means the date, not less than thirty (30) days written notice from either party to the other Party, declaring this Contract to be null and void OR the Termination Date as specified under 23.1.
	14. “Third Party” means a Person other than USP or the Service Provider;
	15. “VAT” means Value-Added Tax levied in terms of the Value-Added Tax (VAT) on spending that is levied on the supply of goods and services in Fiji at the rate of 9%, with effect from 1 January, 2016.
	16. Any reference in this Agreement to –
		1. a “Clause” will, subject to any contrary indication, be construed as a reference to a Clause hereof.
		2. “Law” will be construed as any Law (including common or customary Law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court.
		3. a “Person” is a reference to any person, company, close corporation, trust, partnership or other entity, whether or not having separate legal personality.
	17. Unless inconsistent with the context or save where the contrary is expressly indicated;
		1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect will be given to it as if it was a substantive provision of this Agreement.
		2. when any number of days is prescribed in this Agreement, same will be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day will be the next succeeding Business Day.
		3. In the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment will be the subsequent Business Day.
		4. In the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance will be the subsequent Business Day.
		5. Any reference in this Agreement to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
		6. No provision of this Agreement constitutes a stipulation for the benefit of a Person who is not a Party to this Agreement; and a reference to a Party includes that Party’s successors-in-title and permitted assigns.
	18. Unless inconsistent with the context, an expression which denotes –
		1. any one gender includes the other genders; and
		2. The singular includes the plural and vice versa.
	19. The RFT and the Service Provider’s proposal (Annexures A and B) forms an integral part hereof and words and expressions defined therein shall bear, unless the context otherwise requires, the same meaning in this Agreement. To the extent that there is any conflict between the RFT, Service Provider’s Proposal and the provisions of this Agreement, the provisions of this Agreement shall prevail.
	20. Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, will bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in that Clause.
	21. The termination of this Agreement will not affect any of the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
	22. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
	23. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
	24. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
	25. For all purposes under this Agreement, a reference to “written” or “in writing” will exclude any data message and “signed” or “signature” will not include an electronic or advanced electronic signature. The terms “data message”, “electronic signature” and “advanced electronic signature” will have the meanings assigned to it in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), as amended.

# DURATION

* 1. This Agreement commences on the Commencement Date, notwithstanding the date of signature hereof and will continue in full force and effect for a period of as specified in this agreement until the Termination Date, unless terminated earlier in terms of this Agreement.

# SCOPE OF SERVICES

* 1. The Service Provider will render the Services on the terms and conditions contained in this Agreement generally and in accordance with the specifications set out under Services Description below and the manufacturer’s instructions and specifications.
	2. The Services will comprise of the Provision of Scheduled Inspections, Testing, Maintenance, and Repair Services of Generator and Associated Equipment’s at ……………………...

# SERVICES DESCRIPTION

* 1. **Preventative Maintenance Services - General Obligations**
		1. This work shall involve the services for the Provision of Scheduled Inspections, Testing, Maintenance, and Repair Services of Generator and Associated Equipment’s and emergency responses for items listed in the Annexures, being of various make. The Service Provider shall ensure proper operation of each equipment while also completing the Monthly and Annually Service Tasks on all Generators Units and associated equipment. The Service Provider should ensure completion of maintenance task as per agreed schedule providing the resources and materials as required.
			1. Maintain Equipment in accordance with Manufacturers recommendations
			2. Ensure adherence to all relevant USP Environment, Health and Safety Regulations, Code of Conduct and Policies and Procedures.
			3. The service provider is expected to adhere to all OHS rules and regulations as applicable at the service site and as required in the provision of the service.
			4. Ensure adherence to all relevant Government Laws and Regulations, Equipment Standards and National Building Code.
			5. The service provider is required to extend its public liability clause to cover its workers at any of USP’ sites.
	2. **Monthly / Annually Servicing - General Maintenance**
		1. A robust preventative maintenance program, combined with scheduled testing will help to ensure future safety, performance and economy of the generators. When determining the maintenance intervals, take into account the manufacturer's recommendations, how often the generator is used, the severity of equipment loading, the age and wear of the equipment, the equipment’s operating environment, and the inherent quality of the equipment. All maintenance, repairs, replacements, and alterations must conform to the applicable generator standards. At no time, except when necessary during tests and inspections, may require safety devices or electrical protection devices be made ineffective. In the event that these devices are made temporarily ineffective, they must be returned to full operating condition before the generator can be returned to service.
		2. The scope of the preventive maintenance program shall be comprehensive and shall include, at a minimum:
			1. Inspection
			2. Adjustments
			3. Lubrication
			4. Repairs and replacements
			5. Housekeeping/cleaning
			6. Recordkeeping - such as service reports, maintenance history etc.
		3. The program shall maintain the generator to run at load and be compare with generator rated capacity.
	3. **Records and Logs of Preventative Maintenance Activities (Electronic Log)**
		1. A complete log (electronic system) must be kept that contains records of all maintenance, adjustments, repairs, replacement, etc., performed on the generator. The log must include the dates, names of participating personnel, and description of tasks performed, including tests and inspections, reports, trouble calls, corrective action, recommendations, or any other incidents related to the generator. Manufacturer's data and drawings for the generator equipment shall be accessible and maintained to reflect the current state of the equipment. Important data such as manufacturer names, part numbers, serial numbers, sizes, and types shall be readily accessible. Any pertinent service bulletins shall also be kept.
		2. Checklists for the scheduled preventive maintenance tasks shall be developed and kept to ensure that these tasks are performed.
		3. All records and logging of preventative maintenance to parts failure should be reported during the month of inspection.
	4. **Safety**
		1. The following practices shall be observed, at a minimum, during maintenance, inspection, or testing procedures:
			1. All safety devices must be in operational condition.
			2. Lockout/tag out procedures must be followed if maintenance procedures require that the equipment not be operated.
			3. Ensure that personnel performing maintenance, inspection, and testing tasks wear clothing that is not loose fitting and that they are provided with proper protective equipment, such as safety shoes, hard hats, eye protection, and hand protection.
			4. Provide barriers and signage, where applicable, especially at hoist way doors.
			5. Upon completion of work, remove any jumper wires that were used.
			6. It is possible that the generator pit may be designated a "Permit Required Confined Space." The additional required safe procedures must be attended to in these cases.
			7. Provide proper lighting.
			8. Determine that adequate refuge space exists above and below the car.
			9. Ensure the working area is clean and dry.
	5. **Inspection and Scope of Works**
		1. All inspection shall be carried out at monthly and annually intervals by a qualified technician. Where items are inspected and found to be defective, broken, out of adjustment they must be repaired, replaced, or adjusted to meet the standards.
		2. This work shall involve the maintenance and emergency repair of the generators auxiliary equipment, ATS switches and GPRS modems listed in Annexure B, being of various sizes and manufactures. Generator & auxiliary equipment maintenance shall ensure proper operation of each generator while also completing the required monthly and annual generator load testing.
	6. **Generator Service - General Requirements**
		1. Minimum Generator Maintenance Requirements for PMS – At a minimum, the results of each inspection and maintenance (“Preventative Maintenance Check list”) as required in this agreement shall be documented in the maintenance log for each generator/site and items not applicable for a particular generator/site should be noted as such.
		2. The Service provider may amend the Preventative Maintenance Schedule (PMS) if approved by the USP, provided that the PMS shall include the minimum requirements of the manufacturer and may include additional items as recommended by the Service Provider based on their experience/expertise. Deviations from the schedule will only be allowed by written approval from USP and may also include amendments to payment schedules as agreed between the parties.
	7. **Preventative Maintenance - Monthly Checklist/Service Schedule**
		1. Check the level of fuel and lubrication & top up to the full level mark as required. – Additional fuel will be charged to USP at the rates listed in the Annexures to the agreement. All invoicing for additional fuel will be accompanied by a copy of the generator log showing the running hours of the particular machine for the previous month.
		2. Check the air and fuel filter condition and replace if required.
		3. Check all drive belts for Condition/ tension replace as required
		4. Check and drain water/sediment for primary filter, inspect filter and replace as required.
		5. Check all hoses for loose connection or deterioration, fasten and replace as required
		6. Check battery acid levels/ terminals and test with battery load tester for Battery Health condition/ratings
		7. Check and record battery charge, check trickle charger is operational supplying the correct voltage.
		8. Check oil leaks and clean and resolve any issues
		9. Check coolant levels and for coolant leaks, top up to the full level mark as required.
		10. Check exhaust system is clear, free of leaks and insulation is in place. Check exhaust discharge temperature
		11. Start and test run, check auto start-stop
		12. Check oil pressure is above minimum pressures
		13. Check operating coolant temperature is within tolerances
		14. Check emergency shutdowns for low oil pressure are operational
		15. Check the High coolant temperature and over speed alarms/auto shut down functions are operational
		16. Visual inspection of all wiring and circuit breakers and the Control Panel
		17. Clean debris in and around the unit, Clean exterior of the unit housing
		18. Check and record voltage, hertz, amperage and calibrate if required to correct settings
		19. Check and recommend any corrosion protection requirements
	8. **Annual or 500hrs Service Check List/Service Schedule (whichever is first)**
		1. Carry out tasks as per the monthly service in addition to the following;
		2. Change air filter;
		3. Valve adjustment; (as required)
		4. Check all engine mountings ensuring all connections, rubber mountings and fastenings are in good condition without visible signs of wear or failure, repair/replace as required;
		5. Change oil and fuel filter; (Oil Changes & filter shall be conducted as recommended by oil analysis not to exceed 1 year. The Service Provider shall include 100% of the listed generators requiring oil change in the lump sum yearly price. If more oil changes are warranted, the cost shall be paid by USP according to the unit rates in Annexure B. A quotation for additional oil changes must be provided to USP for approval prior to work commencing.
		6. Lubricate/grease necessary fittings;
		7. Change fuel filter and carry out fuel flushing and refuelling
		8. Empty, flush and replace radiator coolant
		9. Clean and clear crankcase breathers
		10. Carry out Governor servicing and testing
		11. Carry out Starter motor servicing with testing

***Note:***

***All maintenance should also be carried out in accordance with the manufacturers or supplier’s instructions and use of genuine parts and fuels and oils approved by USP.***

***Disposal of oils and engine consumables are the responsibility of the service provider and must be done in accordance with best practice and Local Environmental Management Act.***

* 1. **Automatic Transfer Switch Service - As listed in the Annexures**
		1. De-energize the switchgear (ATSs equipped with an isolation bypass feature do not need to be de-energized).
		2. Remove the arc chutes and pole covers. Consult the manufacturer's information for proper procedure. This step will allow visual inspection of the main and arcing contacts.
		3. Test and recalibrate all trip-sensing and time-delay functions in the switchgear. Depending on the manufacturer, the steps required here will vary. The focus here should be to verify and record what current settings are and to ensure the current adjustments meet the customer's needs and expectations. If adjustments are necessary, the means to make and verify those adjustments need to be examined. For example, a voltage pick-up or dropout adjustment may require the use of a variable source such as a variable ac transformer. The standby engine can be a source of variable frequency, etc. In any case, the manufacturer is your source for information concerning these adjustments.
		4. Vacuum the accumulated dust from the switchgear and accessory panels. Never use air to blow out dirt. Subjecting the TS unit to compressed air may have a detrimental effect by forcing dirt and debris into the switch mechanism.
		5. Inspect for moisture or signs of previous wetness or dripping.
		6. Inspect all insulating parts for cracks or discoloration due to excessive heat. Part of any complete maintenance program is an infrared scan. This work is done prior to maintenance with normal loads applied to the gear being scanned. The resultant report will define problem areas. The use of this information will allow the maintenance provider to take a proactive approach.
		7. Inspect all main arcing contacts for excessive erosion. Arcing contacts are intended to be sacrificial by nature. They take the brunt of the energy when making or breaking the load. Careful attention should be paid to these contacts.
		8. Inspect all main current-carrying contacts for pitting and discoloration due to excessive heat.
		9. Inspect all control relay contacts for excessive erosion and discoloration due to excessive heat.
		10. Manually operate the main transfer movement to check proper contact alignment, deflection, gap, and wiping action.
		11. Check all cable and control wire connections to the transfer switch control and sensing panel and other system components and tighten if necessary.
		12. Re-energize the switchgear and conduct a test by simulating a normal source failure. (Important to verify the ATS works on auto and manual mode, all switches are in correct position for auto mode and this is recorded in check sheet)
	2. **GPRS Modem Service - As listed in the Annexures**
		1. Inspect the GPRS modem, connections, wiring and antennae ensure all are in good condition;
		2. Verify modem signal;
		3. Verify the approved contact numbers for USP and Service Provider employees are registered on the system update contact details for any approved changes to USP and or Service Provider personnel;
		4. Verify with each individual programmed in system to receive information/send commands that system is working signals are being sent/received by all mobile devices;
		5. Test system start up/shut down functions via GPRS device;
		6. Check that generator historical data has been logged and no data gaps exist for generator operation history for the previous service period.
	3. **Required Load Testing**
		1. Monthly Automatic Transfer Switch Test (on load) conducted for a **minimum 30 minutes**
		2. Annual Load Test conducted for a **minimum of 4 (four)** hours on load.
	4. **On Call Service & Attendance Procedure – General Requirements**
		1. The contractor is required to respond and attend to issues at any time of the year in accordance with the Response Table provided. R1, R2 and R3 Response incidences will be attended to and resolved in accordance with the following procedure;
		2. Notification will be given by telephone, email or other means by the USP representative list in this service contract.
		3. To comply with resolution times specified in the Response Table, approval for the supply of replacement parts and equipment will be provided in writing by the USP representative. The Approved Contractor will be required to keep some parts and consumables in stock to ensure faults are rectified with the timelines stated below.
		4. All unscheduled service calls and repairs or replacements should be signed off by the USP representative within the specified resolution times listed in the response table below.
		5. **Table 1 – Response Times**

|  |  |  |  |
| --- | --- | --- | --- |
| **Incidents** | **Service Hours** | **Response Times from Receipt of Notification (including travel time)** | **Impact** |
| **Emergency (R1)** | 24 Hours a day, 7 days a week | 30 minutes | Failures have a major impact on USP operations and or failure constitutes danger to health, personnel or equipment |
| **Urgent (R2)** | Normal Business Hours Monday to Friday | 60 minutes | Failures do not pose immediate impact to health, personnel or equipment but have a negative impact on USP operations  |
| **Important****(R3)** | Normal Business Hours Monday to Friday | 1 working day | Failures do not impact USP operations but can escalate as an URGENT incident if left unattended |

* + 1. The Service Provider guarantees a compliance of 97% (ninety-seven percent) with the Response Times Targets set out in Table 1 measured over a thirty (30) day calendar month period per Generator Unit (“Service Level Target”) in respect of Fault and/or Problem Management (‘Service Level”).
	1. **Reactive/Corrective/Repair Maintenance –General Requirements**
		1. For all REACTIVE Maintenance/Repair/Equipment or part replacement detected during the normal maintenance schedule the resolution of such defects will be in accordance to the attendance procedure outlined above;
		2. To aid the contractor with defects resolution times specified in the Response Table; USP may issue a Purchase Order up to a fixed amount for the purposes of this unplanned reactive maintenance, parts or replacement equipment procurement. The Contractor is required to keep some safety stock of critical items such as etc.
		3. Where the contractor identifies that part replacement is required, the contractor shall notify immediately the USP representative for the: Required works (service/breakdown report) and Cost of repair (quote).
		4. The USP representative will assess the quotation and will provide verbal authorization to be followed immediately by written confirmation.
		5. All invoicing for this type of works shall be submitted promptly referencing the PO number and approval from the USP – E&I representative above.
	2. **Reporting Requires of this Service Agreement – General Requirements**

The following reporting template must be submitted to the USP Representative for all equipment listed in the Annexures of this agreement:

* + 1. **Service Reporting Template and Payment process (Monthly/Annually)**

**NOTE:** Monthly invoicing and payment claims will be subject to the satisfactory completion of the below reporting template for all the equipment listed in the Annexures to this agreement. Additional call out services must be reported separately for each case.

|  |
| --- |
| ***Monthly Service Reporting Template*** |
| ***No.*** | ***Location Code*** | ***Site*** | ***Make*** | ***KVA*** | ***Machine Status*** *(Select one of three status Green - OperationalOrange - Operational with defectsRed - Not Operational/Status not updated )* | ***Enter Date of Last Service & Load Test***  *(Day/Month/Year)* | ***Fuel Status*** *(Litres/% filled)* | ***Load Test Satisfactory****(Yes/No)* | ***Service Actions Pending*** *Select Green - No Action Pending, Orange - Service Action in progress or Red( - Repair Action Overdue No. of Job Cards Reported)* | ***ATS Inspection and Test Status*** *(Ok/fault/N/A)* | ***GPRS Modem Inspection & Test*** *(Ok/Fault/N/A)* |
| *1* | *Code A* | *Location A* | *Machine A* | *A* | *Green -Operational* |  *Date of last Service & Test* | *100l/100%* | *Yes* | *Green -No Service Actions Pending (0)* | *ok* | *ok* |
| *2* | *Code B* | *Location B* | *Machine B* | *B* | *Orange - Operational with Defects* |  *Date of last Service & Test* | *150L/100%* | *Yes* | *Orange - Service Actions in progress (2)* | *ok* | *ok* |
| *3* | *Code* | *Location C* | *Machine C* | *C* | *Red - Not operational/Status not updated* |  *Date of last Service & Test* | *200L/50%* | *No* | *Red - Service Actions Overdue/Delayed (1)* | *fault* | *fault* |

* 1. **On Call Reports**
		1. Provide on call reports, indicating cause of call out, remedial action taken, and any other recommendations should be submitted within the response timelines specified under fault management above.
	2. **Penalties**
		1. The Contractor/Service Provider will be evaluated on a monthly and annual basis as per the criteria stipulated in this agreement, and the contractor must achieve a minimum of **50 points on the six monthly and annual evaluations**, failing which, 5% penalty will be levied by the USP against the monthly and annually fee of the contractor.
	3. **Conditions of Penalty are highlighted below:**
		1. The penalty will be limited to 5% of the monthly fee of the SLA
		2. The penalty will only apply if the contractor fails to achieve **50 points** on a monthly basis.
		3. Penalties will take place by way of adjustment to the Contractor/Service Provider invoice on the month in which the evaluation takes place.
		4. If the Contractor/Service Provider scores less than **50 points** **in 2 continuous** evaluations, it will constitute a **breach of contract**, "Conditions of Contract” will apply and the contract could be terminated.
	4. **Key Performance Indicators**
		1. **Six Monthly Assessment**

|  |
| --- |
| **Performance Rating** |
|  **Exceptional (10)** Meets Contractual Requirements and exceeds many to the USPs benefit. The scope of services was accomplished. Corrective actions taken were highly effective. Planned schedule and technical performance are above what was required under the contract. |  **Very Good (8)** Meets Contractual requirements exceeding in some KPIs. Corrective Actions taken were effective and planned maintenance plan was achieved. |  **Satisfactory (5)** Meets contractual requirements. The actions taken by contractor were satisfactory. Some program elements was slightly behind as planned. |  **Unsatisfactory (0)** Does not meet contractual requirements, recovery is not likely in a timely manner. The corrective actions appear or were ineffective |

|  |  |  |  |
| --- | --- | --- | --- |
| ***Performance Description*** | ***Contractor Performance Level Requirement*** | ***KPI Measurement*** | ***Rating*** |
| ***Ensure Optimal Operations*** | *Perform and document scheduled/planned maintenance inspections & testing (Monthly)* | *Ensure 100% of maintenance schedule is complete each month* | *20* |
| *Perform and document unscheduled maintenance activities and reactive repair requests* | *Complete, sign and submit service/repair/call out report immediately* | *10* |
| *Perform and document Emergency Call out Maintenance (R 1, R 2, R3)* | *Ensure 95% of Call Outs (Emergencies) are responded to and resolved within the times stipulated in the Response Table.* | *10* |
| *Provide excellent customer service ensuring 100% client satisfaction, excellent communication, good conduct and professionalism on site* | *Zero customer complaints on the services performed under the contract.*  | *10* |
| ***Financial Management*** | *Ensure signed Monthly Reporting Template is completed in full and attached to invoices submitted to USP as per agreed timelines.* | ***Monthly Reporting Template*** *completed in full (signed) and submitted within* ***7 days with*** *the invoice to the USP.* | *20* |
| ***Reporting*** | *Provision of Service Report to USP. (For Monthly/Annually as applicable)* |  |  |
|  |  |
|  |  |
| *Non Conformance Acton Plan for any reactive or planned maintenance task which is incomplete* | *10* |
|  |  |
| *Send Report on Spare/Replacement equipment & Parts* | *10* |
| ***OHS&E*** | *Ensure Compliance to USP OHS and Health, Environment, Safety and Security (HESS) Plan.* | *Zero safety infringement notices within the evaluation period* | *10* |

* + 1. **Annual Assessment**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Description** | **Contractor Performance Level Requirement** | **KPI Measurement** | **Rating** |
| **Asset Management** | Ensure Warranties/Guarantees for any new installation is managed | Provide USP with a copy of the necessary warranty/Guarantee within 7 days of any new installation | 10 |
| Ensure the Warranty/Guarantee is managed throughout the term(s) of the Warranty/Guarantee | 10 |
| Ensure Warranty/Guarantee terms and conditions are upheld | 10 |
| Inventory Report and Maintenance History | Provide USP with details of any new installations of assets as follows; Make/Model, Location, Serial Number | 10 |
| Provide USP with full updated inventory list of all existing services as follows: Make/Model, Location Code, Serial Number and Unit quantities | 10 |
| Provide Quarterly update on full maintenance history by equipment including any pending maintenance works | 10 |
| **Health & Safety** | Personal Protective Equipment and compliance to Heath, Environment, Safety and Security (HESS) Plan  | Ensure Personal Protective Equipment is managed, issued, utilized on site as required.Zero Safety infringement notices | 10 |
| **Personnel Management** | Management of Contractor Personnel | Ensure USP is informed if a member of your staff is replaced or certification/training changes | 10 |
| Ensure staff are suitably qualified with ongoing training for the function they are performing | 10 |
| Ensure USPs permission is obtained prior to effecting any changes in the staffing structure proposed | 10 |
| Ensure your staffs keep their areas of work in a safe, secure and tidy condition at all times. | 10 |

**Note:**

In accordance with the above rating, the USP Representative will carry out an annual SLA performance review, following which the contractor will be notified of their performance.

* 1. **Fault and/or Problem Management**
		1. Fault and/or Problem Management refer to the management of all Generators System and associated auxiliary equipment faults and/or problems reported by USP.
		2. USP shall report all Generator Units and auxiliary equipment faults and/or problems via; the local USP Facilities Helpdesk/ to the Service Provider’s Service Centre (a “Service Call”).
		3. Both Parties shall follow the fault and/or problem reporting procedures set out in Clause [10](#page18) below.
		4. A qualified technician, employed by the Service Provider, will be available during Service Hours to provide troubleshooting/assistance through site visits in compliance with the response times as set out in Table 2 above. Upon arrival at the relevant site the Service Provider’s technician shall report on the exact nature of the fault and provide a timeline for its resolution in the event that the fault cannot be resolved immediately.
		5. Table 1 above sets out the different types of Service Calls, the hours between which the Services will be available (“Service Hours”) and each specific type of call that can be placed for Generator malfunctions and/or failures.
	2. **Breakdown Repairs (Problem Resolution)**

The Service Provider shall provide this Breakdown Repair as part of this service level agreement. The following procedure will apply for breakdown repairs;

* + 1. Report to the nominated USP representative the nature of the fault (breakdown report) including a quote for any additional cost of repairs. (Quotations must be supplied within the repair times in table 2 below).

**Table 2 – Nature of Breakdown**

|  |  |  |  |
| --- | --- | --- | --- |
| **Nature of Breakdown** | **Impact** | **Repair Times from Diagnosis of Breakdown** | **Financial Impact** |
| **Minor** | Repair/Replacement parts available on site, no additional assistance required | 15 min to 1 hour | Within the agreed cost of parts and labor rates of the service level agreement. |
| **Moderate** | Repair/Replacement parts in stock but nature of repair requires additional assistance/equipment on site | 1 hour up to 24 hours | Costs are within the agreed parts and labor rates of the service level agreement with additional costs associated with off-site tools and or equipment and or subcontractor, specialist requirements. USP Senior Management Approvals may be required. |
| **Major** | Major system failure requiring complete replacement, off site works and additional assistance | Greater than 24hrs up to 3 days. | A detailed cost benefit analysis must be carried out in conjunction with time to restore service assessments. These breakdowns require USP Senior Management intervention. |

* + 1. Upon receipt of the necessary approvals through the USP representative, carry out fault repairs within the repair timelines of table 2; (Written work authorization is separate to this Service agreement and must be obtained prior to work commencing). The contractor is required to keep parts and consumables in stock.
		2. Commission and testing, and sign off by USP representative;
		3. Services normalized;
		4. Report on completed works, including submission of warrantees as applicable

**NOTE:** USP will on written request reimburse the Service Provider for special or unusual expenses, incurred at the USPs specific request with prior written approval including those agreed as part of breakdown repairs and approved in terms of USPs internal procurement policy.

#

# Generator AVAILABILITY

* 1. The Service Provider guarantees strict adherence to the Preventative Maintenance Schedule as included in the Annexures which will help to avoid Generator unavailability.
	2. The Service Provider guarantees availability of the Services of Generator Units to ninety-eight percent (98%) percent measured over a thirty (30) day calendar month period (“Service Level Target”).
	3. Failure to meet the above metric shall be regarded as a Service Level Failure.
	4. For the purpose of this Clause, Generator “unavailability” means any Generator Units that is not operational in:
		1. accordance with all of its manufacturer’s specifications, and/or
		2. Generator Units functions are below the designed, configured, authorized or enabled capacity level.
		3. the auxiliary or equipment (where fitted) has failed causing the Generator to be unable to operate in accordance with the designed and installation requirements.
	5. A downtime that is either approved in advance by USP or is otherwise permitted shall not be regarded as time that the Generator is unavailable.

# SERVICE LEVEL FAILURES

* 1. Failure to adhere to any of the Service Levels mentioned in Clauses [5](#page9) and [6](#page12) will be regarded as a Service Level Failure and will result in USP issuing first warning letter for first failure and 2nd warning letter for second failure and may levy a financial penalty set out in the Table below.
	2. A financial penalty is not a substitute for any other claims that USP may have against the Service Provider in respect of breach of this Agreement. For any given calendar month, the following financial penalties will apply to any Service.
	3. Service Level Failure Penalty

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Number of incidents** |  |  | **Percentage of Penalty** |  |
|  |  |  |  |
|  |  |  |  |  |  |  |
|  | First incident of Service Level Failure | 20% | of Amount at Risk based on the |
|  |  |  |  | total invoice per Semester. |
|  |  |  |  |
|  | Second incident of Service Level Failure | 40% | of Amount at Risk based on the |
|  |  |  |  | total invoice per semester. |
|  |  |  |  |
|  | Third incident of Service Level Failure | 60% | of Amount at Risk based on the |
|  |  |  |  | Total invoice per semester. |
|  |  |  |  |
|  | Fourth incident of Service Level Failure | 80% | of Amount at Risk based on the |
|  |  |  |  | Total invoice per semester. |
|  |  |  |  |
|  | Fifth incident of Service Level Failure |  | 100% of Amount at Risk based on the |
|  |  |  |  | Total invoice by semester; alternatively USP |
|  |  |  |  | reserves the right to cancel the |
|  |  |  |  | Agreement. |
|  |  |  |  |  |  |  |

* 1. The following instances shall be excluded from being regarded as a failure to adhere to the agreed Services Levels;
		1. Where the Service Call is suspended in agreement with USP;
		2. Where the Service Call has been referred back to USP for further clarification; or
		3. Where planned pre-approved access to the relevant Generator is delayed by USP.

# SERVICE CHARGES AND PAYMENT TERMS

* 1. In respect of the Services supplied to USP in terms of this Agreement from time to time, USP undertakes to pay to the Service Provider the service charges calculated in accordance with the agreed charges within thirty (30) days of receipt of **an accurate** **invoice which must be accompanied by the required monthly report, in accordance with the template provided in this agreement as well as any accompanying call out reports undertaken in that month.**
	2. All fees, charges and disbursements are quoted inclusive of VAT.
	3. The Service Provider shall within 7 days of the month, in which the Services were rendered, issue USP with an invoice for the relevant month, which is accurate and contains all relevant information as required by law.
	4. All invoices shall be accompanied by a service report, signed off by the USP Representative, detailing the Services that were rendered.
	5. All payments in terms of or arising out of this Agreement shall be made free of administration costs, bank exchange, commission or any other deduction to the Party thereto; and in accordance to Clause 8.7, neither Party shall have the right to defer, adjust or withhold any payment due to the other in terms of or arising out of this Agreement or to obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
	6. USP will on written request reimburse the Service Provider for special or unusual expenses incurred at the USPs specific request and approved in terms of its internal procurement policy.
	7. USP may withhold payment of fees, charges and disbursements that USP disputes in good faith or, if the disputed fees have already been paid, USP may withhold an equal amount from a later payment, including disputes in respect of an error on an invoice or an amount paid.
	8. USP shall within five (5) working days of receipt of the invoice notify the Service Provider in writing that it is disputing such amount providing a reasonable explanation of the rationale therefore; and the Parties shall promptly first address such dispute in accordance with this Clause.
	9. If the dispute relates to only certain of the amounts included on an invoice (or equals in the case of disputed amounts that have already been paid), then USP shall pay the undisputed amounts in accordance with Clause [8.1.](#page15) If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.
	10. The Parties’ senior managers (one level up from the Service Provider’s Project Manager and the USP Representative) shall meet to resolve the dispute within five (5) working days of USP giving notice of the dispute. The senior managers shall endeavour to resolve the dispute within five (5) working days of its referral to them.
	11. The undisputed portion(s) of the invoice shall be payable on the terms defined in Clause [8.1-8.5;](#page15)
	12. Where the dispute remains unresolved after the informal procedures set out in Clause [8.8](#page16) above the dispute shall be dealt with in terms of the dispute resolution procedures set out in this Agreement.
	13. The fees and/ or charges will be fixed for a period of 36 (thirty six) months.

# SERVICE LEVEL MANAGEMENT

* 1. In order to manage the Services provided by the Service Provider to USP, the Parties agree that meetings between the Parties will be arranged on the following basis:

|  |  |  |  |
| --- | --- | --- | --- |
| **Meeting** | **Schedule of Meeting** | **USP**  | **Service Provider Representative** |
| Service Relationship Review | Annually | Manager Contracts & Administration |  As specified in this agreement |
| Service Review | Monthly | Contracts Administrator |  As specified in this agreement |

* 1. During the Monthly Service Review meeting the performance of the Service Provider will be discussed.
	2. In the event that USP is dissatisfied with the overall execution of the Services based on multiple Service Level failures, such dissatisfaction will be communicated to the Service Provider’s Project Manager at a meeting held between the Parties in terms of Clause [9.2.](#page17)
	3. Should the Service Provider be unable to improve its performance and execute the Services at a level acceptable to USP, during the next service following such Monthly Service Review meeting, USP reserves the right to terminate the Agreement based on unsatisfactory performance, as provided for in Clause [22.2.](#page35)
	4. Service Credits will continue to accrue to USP in respect of any Service Level Failures during such remedial period/s or during any notice period/s.
	5. Where USP is of the opinion that the Service Provider is failing to meet its obligations in terms of adhering to the Preventative Maintenance Schedule or prescribed Response and Resolution times, or where the Service Provider is of the opinion that USP is not fulfilling its responsibilities in terms of Clause 13, such non-compliance shall be reported and escalated (if necessary) through the escalation channels as set out below.

# THE SERVICE PROVIDER’S CALL LOGGING PROCEDURE

* 1. Where fitted, USP will make available to the service provider the automated system for monitoring, receiving alerts and detecting faults, that will notify the service provider when respond is required in accordance with the response requirements of this contract.
	2. For equipment where this automated system is not installed, the following procedures will apply related faults and/or problems. Adherence to these procedures will ensure the best possible response and turnaround times for the resolution.
		1. The USP Representative will call/email/message as appropriate the service provider representative to log a Service Call and specify;
			1. Site or details of the equipment requiring the service call out;
			2. Description of the fault and/or problem as known;
			3. Required response priority level;
			4. Other information as appropriate
	3. On receipt of the Service Call the Service Provider will analyse the fault and/or problem and;
	4. For Generators that are still under warranty repair, will repair as per the timelines set out in Clause 5.4; and
	5. For Break and Fix repair, resolve the Service Call within the timelines set out in this agreement
	6. It should be noted that -
		1. All faults and/or problems must be reported to the Service Provider Contact Centre/nominated representative.
		2. A job card will be issued by the USP as soon as possible following the Service Call.
		3. The Service Provider must record all details relating to a Service Call in a service report.
		4. If a Service Call causes the Service Provider to start the repair of a Generator otherwise covered under Limited Warranty and the Service Provider reasonably determines that the Generator is not defective and that the fault and/or problem giving rise to the Service Call was the result of user error, hardware, electrical spikes or any other components by a party other than the Service Provider, USP will be invoiced accordingly.
		5. If a Service Call is subsequently determined to have arisen as a result of the Service Provider’s negligence on previous break and fix repair work on a specific Generator or failure to conduct the relevant preventative maintenance on a specific Generator, USP shall not be invoiced and the cost will be borne by the Service Provider.

# UNDERTAKINGS BY THE SERVICE PROVIDER

The Service Provider undertakes in pursuance of its appointment in terms hereof:

* 1. to perform the Services as may from time to time be required by USP which are detailed in this Agreement and/or communicated to the Service Provider by the USP Representative from time to time;
	2. to exercise the utmost good faith towards USP both in carrying out its duties hereunder and also in all its dealings with USP;
	3. to report to USP Representative as may from time to time be reasonably necessary or desirable in connection with the Services; and
	4. to exercise all reasonable skill, care and diligence in the discharge of its obligations in terms of this Agreement.
	5. During the currency of this Agreement, the Service Provider undertakes to ensure that its personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement.
	6. The Service Provider undertakes to comply with and ensure that its personnel comply with all security measures imposed by USP regarding security and access to USP premises.
	7. The Service Provider undertakes to have sufficient contingency measures in place and to at all-time be responsible to USP for fulfilment of its obligations under this Agreement. The Service Provider is allowed to subcontract its obligations to other service providers, subject to USP’s prior written consent. The Service Provider will remain the primary contractor and undertakes to at all relevant times be solely responsible for the management of the contract. No separate contracts will be entered into between USP and any such subcontractors.
	8. The Service Provider undertakes to ensure that it at all times adheres to, and complies with all Laws, including without limitation, employment laws and bargaining council agreements to which it is a party.
	9. The Service Provider undertakes to exclude the provision of any services not specifically recorded in this Agreement. Any such additional services will be provided at USP’s request and on such terms and conditions as the Parties may agree in writing at such time, provided that such additional services will be related to the scope of this Agreement.
	10. The Service Provider undertakes to at all times adhere to, and conduct itself in an ethical manner, which will not be in conflict with those values that constitute good corporate governance in general or specifically communicated by USP to the Service Provider from time to time.
	11. The Service Provider undertakes to provide the Services in accordance with best practices, in conformance with existing industry codes and to the highest standards as established for such Services in the Country where the services are to be provided of, in order to ensure a safe and healthy working environment.
	12. The Service Provider undertakes to keep and maintain proper records of all services rendered in terms of this Agreement, including duly completed timesheets/service reports, which are to be signed off by the relevant supervisor and the USP Representative on site on each service, as well as proof of all parts purchased in terms of this Agreement. The aforementioned documents must accompany all invoices submitted to USP for payment.
	13. The Service Provider undertakes to invoice USP for the Services rendered in accordance with the invoicing requirements, as more fully described in monthly reporting requirements for this agreement.
	14. The Service Provider undertakes prior to the third (3rd) day from the date of service, to supply the USP Representative of each Generator where the Services have been rendered, with a comprehensive management report, documenting all the Services rendered and work performed and completed at such Generator during the month.

# RESPONSIBILITIES OF THE SERVICE PROVIDER

* 1. The Service Provider shall provide qualified service personnel to carry out the preventative maintenance tasks listed in in this scope and the attached annexures.
	2. The approved listing of qualified service personnel is attached in the Annexures. Any substitutions or variations to this list of approved service personnel may be approved by USP after submission and endorsement by USP of the CVs and details of proposed substitutes.
	3. The Service Provider shall ensure that the service personnel-
		1. Are conversant with the Occupational Health and Safety Laws of the Country where the services are to be provided;
		2. Are effectively supervised by the Service Provider and that the level of supervision is of a sufficient standard to comply with the preventative maintenance tasks scheduled in the Annexures; and
		3. Are physically and mentally fit to fulfil their duties.
	4. The Service Provider shall at its own cost ensure that:
	5. The service personnel are properly and appropriately clothed at all times when on duty as prescribed in terms of the Occupational Health and Safety Act;
	6. Its service equipment is maintained and in a fully serviceable condition so as to comply with the legal safety requirements and to enable the service personnel to meet the requirements of the RFT;
	7. Any change room, plant room and facilities made available to the service personnel are kept in a clean and tidy condition;
	8. Appropriate signage and notification pertaining to temporary closure, danger zones, inconvenience or public safety is prominently displayed whenever required; and
	9. The Service Provider shall present, on conclusion of each inspection, maintenance service, break and fix repair, an acknowledgement of service slip in duplicate for the signature of the USP Representative. The duplicate copy shall be retained by the USP Representative for record purposes.
	10. The Service Provider shall ensure that his personnel comply with the requirements of this Agreement at all times and in all respects.
	11. The Service Provider is required to provide a level of resource necessary to fulfil his commitments at all times and to take into account sickness and holidays etc. of service personnel.
	12. The Service Provider shall have sufficient infrastructure on a regional cluster basis for the effective management of this Agreement and the Service Provider shall provide all items/equipment necessary for the proper execution of the Services in terms of this Agreement.
	13. The Service Provider shall set up a Service Centre, to which Service Calls will be logged, prior to the Commencement Date.
	14. Disruption to Services:
	15. The operational requirements of USP shall take precedence over any Maintenance work activity, except where the works are required due to failure of the Generator sets having an adverse effect on USP operations.
	16. Where USP agrees in advance, work can be carried out after hours for which after hours rates will apply in terms of this Agreement.
	17. All work, except in cases of emergencies, shall only be undertaken after fully informing the relevant USP Representative who will have to agree in writing to the precise timing of such operations.
	18. USP shall pre-approve all down time in advance prior to any need for a shutdown. No shutdown will take place without USP’s written approval.
	19. **Time Schedules for Performance of Activities**
		1. The Service Provider shall provide the USP Estates & Infrastructure with detailed programs for the preventative maintenance services to be performed (hereinafter referred to as “Preventative Maintenance Schedules”) specified in Annexure D within fourteen (14) days of the commencement of this contract.
		2. Programs shall be fully coordinated and shall show the start and completion dates of each item of maintenance, repair or other work and shall meet the operational requirements of USP.
		3. The Service Provider shall provide USP Estates & Infrastructure Management with further updated programs for any of the Services which may become necessary due to variation, instruction, alteration or change required by USP.
	20. **Noise Control**
		1. The Service Provider must obtain the written approval of USP, which will not unreasonably be withheld, prior to any noisy operations that it may plan to conduct.
	21. **Workmanship and Materials**
	22. The Service Provider is required to provide the Services in accordance with the highest professional standards and to carry out the maintenance work as defined in this Agreement. Such work shall be executed to the satisfaction of USP. Any work not executed in accordance with the requirements for preventative maintenance or breakdown repairs as defined in the RFT (Annexure A), the Service Provider shall rectify or replace as instructed by USP and at its own expense.
	23. Supervisory staff must have technical knowledge to be able to instruct the operations under their control, in addition to the necessary management and supervisory skills and expertise to efficiently organize and control the work.
	24. Replacement of parts and any installation work shall fully comply with all relevant standards, codes of practice and manufacturers’ maintenance recommendations and shall be of the same standard or higher than the original part replaced and be compatible with the existing installation.
	25. The Service Provider must ensure that sufficient replacement parts are held within the Country where the services are to be provided at all times.
	26. The Service Provider must cover all replacement parts with a limited warranty as per Manufactures instructions in respect of any defect or poor workmanship.
	27. Materials supplied by the Service Provider shall be subject to the following requirements:
	28. The Service Provider shall, if required, submit to USP names of manufacturing suppliers and samples of equipment, parts and/or materials.
	29. In all cases where equipment, parts and/or materials are specified that it must be of an “approved” type or quality, the written approval of USP must be obtained before such equipment, parts and/or materials are ordered or manufactured.
	30. The Service Provider may be required to show that compliance with the prescribed standards has been demonstrated in tests performed by a recognized testing house in respect of any such equipment or parts.
	31. The Service Provider will procure for USP the right to at any time inspect and examine any aspect of the Preventative Maintenance Schedule (Annexure D) and to test any materials, parts or equipment intended to be used, either at the building or at any factory or workshop where such equipment, parts or materials are being manufactured, or repaired from any relevant third party, if necessary.
	32. **Discomfort to building occupants**
		1. The Service Provider is to ensure that all reasonable and practical methods of carrying out the work are employed to avoid the creation of dust, debris, airborne particles, smoke and odour.
		2. Except in cases of emergencies and instances where creation of smoke, fumes etc. is unavoidable the Service Provider is required to;
		3. Inform USP in advance that such an operation is taking place; and;
		4. Carry out the works in such a manner as to ensure that the creation of the smoke, fumes etc. is minimized/localized. This will include all necessary protection, sealing and all cleaning operations, that maybe required.
	33. **First Aid and Accident Reporting**
		1. In case of an incident or accident (involving personal injury), the Service Provider shall report the incident or accident to the relevant USP Representative. The Service Provider is to maintain a register of all incident and accident reporting, and to ensure that it registers with the Department of Labour as required by the provisions of the Occupational Health and Safety Laws.
	34. **Cleanliness**
		1. The Service Provider must carry out all works in a clean and tidy manner, conducive to the normal operation of the building in which the Services are carried out. Rubbish must be cleared and removed by the Service Provider after each Generator Unit attendance including all redundant equipment at the Service Provider’s costs.
	35. **Subcontractors**
		1. The Service Provider shall be responsible for any subcontractor employed by it in connection with the Services. The obligations and restrictions imposed on the Service Provider as set out in this Agreement, including the prescribed Preventative Maintenance Schedule shall apply to the subcontractor and its employees. All subcontractors shall be approved by USP prior to engagement.
		2. The Service Provider shall be liable to ensure the subcontractor’s compliance with all its obligations and shall be held responsible for any non-compliance on the part of such subcontractor.

# RESPONSIBILITIES OF USP

USP undertakes to-

* 1. Nominate representatives who will be the Estates & Infrastructure representative responsible for the clusters (refer to Annexures) and responsible for managing the delivery of the Services by the Service Provider, including but not limited to:
		1. Authorizing the Service Provider to start with the Services;
		2. Approval of invoices submitted by the Service Provider; and,
		3. Monitoring of standards of the Services.
	2. If required by the Service Provider, furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.
	3. USP will provide the Service Provider with access to the Generator on an “as and when required” basis, subject to the terms and conditions set out in this Agreement.

# PERSONNEL

* 1. The Service Provider undertakes to make available from time to time personnel as may be required for the purpose of rendering the Services to USP according to the levels of service required in terms of this Agreement.
	2. The Service Provider shall be solely responsible for their personnel at all times and nothing contained in this Agreement may be construed as constituting any relationship between the contracting Parties other than for the Services provided.
	3. For the purpose of liaising from time to time with the Service Provider regarding any of their personnel, the Service Provider shall appoint a Project Manager and provide USP with their relevant contact details within seven (7) days after the Commencement Date. Any complaints, queries, requests, notices or like information relating to any of the Service Provider’s personnel which may in any way be reasonably regarded as material to the Service Provider's responsibility for their personnel shall be communicated by USP in writing to the Service Provider’s Project Manager. The Service Provider undertakes to take such action as may be appropriate in a timely manner upon receiving such notice.

# CHANGES TO THE SERVICE LEVEL AGREEMENT

* 1. **Amendment to Agreement**
		1. Any amendment to the terms and conditions of this Agreement must be approved by both the Service Provider and USP. The amendment of this Agreement will take place in the form of an addendum which will be recorded as an Appendix to this Agreement and which must be duly signed by both Parties’ Authorized Representatives.
	2. **New Services to Agreement**
		1. The Parties will agree in writing to the addition of new Services during the term of this Agreement, where after such new Services will be incorporated into the definition of Services as defined. The Service Provider will be responsible for initiating and ensuring completion of the new Services. These Services will further be incorporated into the scope of work to be carried out by the Service Provider. Changes to the Services may be reviewed on a regular basis upon written request made by either Party. Such changes will be effected by following the process described in Clause [15.1](#page28) above.

# WARRANTIES

The Service Provider hereby represents and warrants to USP that –

* 1. this Agreement has been duly authorized and executed by it and constitutes a legal, valid and binding set of obligations on it;
	2. it is acting as a principal and not as an agent of an undisclosed principal;
	3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any Court, competent authority or arbitrator or competent jurisdiction applicable or relating to it, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
	4. it is, at the Commencement Date of this Agreement, in compliance with, and throughout the term it will remain in compliance with, all applicable Laws relating to taxation in the Country where the services are to be provided. The Service Provider further warrants to USP that it will deliver to USP upon the Signature Date, and on each anniversary thereof during the term of the Agreement, a valid tax clearance certificate issued for the then current year. Failure to provide such a certificate will entitle USP to withhold payment or alternatively to terminate the Agreement with immediate effect and without incurring any liability in connection with such termination.
	5. it will for the duration of this Agreement maintain a complete audit trail of all transactions under this Agreement, sufficient to permit a complete audit thereof. The Service Provider will provide USP and USP’s auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections of the Service Provider, in order to verify the Service Provider’s compliance with all the terms of this Agreement and to enable USP to comply with the requirements of its regulators and governmental entities having jurisdiction.
	6. it will treat as strictly confidential all information, including Confidential Information, received or obtained as a result of entering into, or performing in terms of, this Agreement.
	7. Throughout the duration of this Agreement it will have the resources, skills, qualifications and experience necessary to provide the Services.
	8. It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material, goes to the root of this Agreement and have induced USP to conclude this Agreement.
	9. The provisions of this Clause [16](#page29) will survive the termination of this Agreement.

# HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

* 1. The Service Provider will ensure that its personnel will at all times, whilst on USP's premises, adhere to the standard health, safety and security procedures and guidelines applicable to USP's personnel, as such procedures and guidelines may be changed by USP from time to time and are available to the Service Provider on request. Should USP at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, USP will be entitled to deny such member of the Service Provider's personnel access to any or all of USP's premises and require the Service Provider to replace such member of its personnel without delay. The Service Provider will not be relieved of its obligations under this Agreement as a result of such denial of access, and USP will have no liability to the Service Provider with regard thereto.
	2. The Service Provider hereby agrees and undertakes, in terms of the Occupational Health and Safety Laws to ensure that the Service Provider and the Service Provider's personnel comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider personnel and ensuring that neither USP’s personnel nor any Third Party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.
	3. The Service Provider hereby agrees and undertakes to maintain its equipment in good order, so as to comply with USP’s occupational health and safety policies, procedures and standards, as amended from time to time.

# INDEMNITIES AND INSURANCE

**The Service Provider will**:

* 1. On or before the Commencement Date and for the duration of this Agreement have and maintain in force public liability insurance in the amount specified in this agreement to cover any claims, Losses and/or damages for which it is liable in terms of this Agreement.
		1. Deliver to USP upon the Signature Date of this Agreement, and on each anniversary thereof during the term of the Agreement, proof of such insurance coverage as aforementioned.
		2. Indemnify and hold USP harmless against all Losses (including legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at Law in respect of injury or death of any Person or loss of or damage to any Person or property occurring by reason of the Service Provider’s wilfulness or negligence prior to, during or after its execution of the Services, including such Services as provided for under Clause [11.6;](#page21) and Report all incidents affecting, or which may affect, any of the terms and conditions of any insurance policy, including any of USP’s insurance policies becoming void or voidable, or whereby the insurance premiums for such insurance may be increased, immediately upon becoming aware of their occurrence.
	2. **USP’s right to Acquire Insurance in Certain Circumstances:**
		1. Without limiting the generality of the USP’s rights and remedies hereunder, in the event of a failure by the Service Provider to maintain the insurance referred to in Clause 18.1.1, or to provide evidence of renewal at least 3 (three) business days prior to expiration of the applicable insurance cover, on 3 (three) business days’ notice to Service Provider, USP may purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement.
	3. **Risk and Loss**
		1. The Service Provider shall be responsible for risk of loss of, and damage to, any assets, equipment and/or tools in its possession or under its control. Any such items in the possession or control of the Service Provider’s Sub-contractors or agents shall be deemed to be under the control of the Service Provider.

# LIMITATION OF LIABILITY

* 1. The Parties agree that, in the event of a breach of any of the provisions of the Agreement, any party so breaching this Agreement shall be liable to the other for any losses which constitute direct and / or general damages. The Service Provider will not be responsible for any losses save that arising out of gross negligence, breach of warranty, wilful misconduct or breach of the confidentiality provisions by the Service Provider or its Staff.

# SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL

* 1. USP reserves the right in its sole and absolute discretion to do a security check (vetting) on the Service Provider’s personnel involved with the performance of the Services. The Service Provider will procure from its personnel such documentation as may be reasonably requested by USP, to enable USP to conduct such security checks as aforementioned. Where USP finds any of the Service Provider’s personnel to be a security risk, USP will inform the Service Provider accordingly and the Service Provider will immediately replace such person with a suitably qualified substitute.

# ETHICAL BUSINESS PRACTICES

* 1. USP has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to USP and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those Persons that is likely to constitute a contravention of the Fiji Independent Commission Against Corruption Promulgation 2007.
	2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
	3. If the results of any audit of the Services conducted by or on behalf of USP indicates the possibility of corrupt activities, improper or fraudulent practices or theft, USP will, after allowing the Service Provider a reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a Third Party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry.
	4. In the event that an act of corruption, fraud or theft is proven, USP will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement and either assume the provision of the Services itself, or appoint a Third Party to render the Services, as more fully set out in Clause [25](#page38) below. The Service Provider acknowledges that it is crucial that USP be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Service Provider or its personnel, as the case may be.

# BREACH

* 1. Should a Party (“the defaulting party”) commit a breach of any of the provisions of this Agreement, then the other Party (“the aggrieved party”) will be entitled to require the defaulting party to remedy the breach within ten (10) Business Days, or such other reasonable time as agreed to in writing by the Parties, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice, the aggrieved party will be entitled to claim immediate payment and/or performance by the defaulting party of all of the defaulting party’s obligations due in terms of this Agreement, in either event, without prejudice to the aggrieved party’s right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at Law, provided always that the aggrieved party will not be entitled to cancel this Agreement for any breach by the defaulting party, unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by payment of money or, if it is capable of being remedied by payment of money, the defaulting party fails to pay the amount concerned within ten (10) Business Days after such amount has been determined.
	2. It is specifically recorded that multiple Service Level Failures affecting any of the regional clusters will collectively constitute a material breach. USP will however, in its sole and absolute discretion, be entitled to cancel either this entire Agreement based on such material breach, or such part/s of this Agreement relating to the particular affected regional cluster/s.
	3. Notwithstanding the provisions of Clause [22.1](#page34) above, USP may immediately terminate this Agreement at any time by giving written notice of such termination to the Service Provider if the Service Provider is, other than for the purposes of amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final) or under business rescue proceedings or under curatorship or under the equivalent of any of the foregoing; a final and unappeasable judgment against the Service Provider remains unsatisfied for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider; the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business; and/or the Service Provider breaches any of the warranties as set out in Clause [16](#page29) above.
	4. Any termination of this Agreement pursuant to the provisions of this agreement will be without USP incurring any liability in connection with such termination, or prejudice to any claim which USP may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

# TERMINATION

* 1. The Agreement will automatically terminate at the completion of the
	2. **Termination by USP -** Notwithstanding anything to the contrary set forth in this Agreement, USP reserves the right to terminate this Agreement or temporarily defer the provision of the Services, or any part thereof, at any stage with immediate effect on written notice to the Service Provider, should USP in its sole and absolute discretion, decide not to proceed with the Services.
	3. USP shall not be liable for any damage or loss to the Service Provider resulting from termination under this Clause.
	4. In the event that USP terminates this Agreement in terms of this Clause [23,](#page36) the Service Provider will be remunerated for Services rendered to date of such termination, provided that the Service Provider furnishes USP with a valid tax invoice in respect of such Services, such invoice is accurate and meets USP’s invoicing requirements. Save for the aforementioned, USP will have no liability to the Service Provider with respect to such termination.
	5. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a ‘Change Event’) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within thirty (30) Business days after being notified of the Change Event by the Service Provider, USP may terminate this Agreement by giving the Service Provider at least thirty (30) Business days’ prior written notice and designating a date upon which such termination shall be effective. The Service Provider shall notify USP if there is any Change Event within five (5) days after becoming aware of the anticipated Change Event. No sale, acquisition, merger or other change of Control shall be effective against and legally binding on USP if the prior written consent of USP was not obtained. USP shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this Clause.
	6. “Control” in terms of this Clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by either:
	7. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
	8. controlling the majority of the voting rights in such entity; or
	9. Having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
	10. **Termination by the Service Provider -** The Service Provider shall have no right to terminate this Agreement except where USP has failed to make payment of an invoice in terms of this Agreement.
	11. Notwithstanding the provisions of Clause above, the Service Provider shall have no right to terminate this Agreement unless it has given USP thirty (30) days’ written notice of its failure to make payment of an invoice.

# FORCE MAJEURE

* 1. In the event of any act beyond the reasonable control of the Parties, including war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, cyclone, fire, accident or (without regard to the foregoing enumeration), pandemic any other circumstances arising or action taken beyond the reasonable control of the Parties hereto; preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure"), then the Party affected by such force majeure event will be relieved of its obligations hereunder during the period that such force majeure event continues (excluding payment obligations for materials purchased).
	2. The affected Party’s relief is only to the extent so prevented and such Party will not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the force majeure event, provided always that a written notice will be promptly given of any such inability by the affected Party.
	3. Any Party invoking force majeure will upon termination of such force majeure give prompt written notice thereof to the other Party. Should such force majeure event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement by giving written notice to such other Party to that effect.
	4. Notwithstanding anything to the contrary contained in this Agreement, the Service Provider will not be entitled to rely on a force majeure defense in the event that such act, circumstance or action could have been prevented by the Service Provider having proper contingency measures in place.
	5. In the event that the Service Provider is for any reason other than as provided for in this Clause unable to provide the Services for the full duration of this Agreement-

# STEP IN RIGHTS

* 1. In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, USP may in its sole discretion elect to (i) call for an urgent senior level meeting with the Service Provider; and/or (ii) launch an audit investigation into the Service Provider’s operations in accordance with the audit provisions and/or (iii) temporarily take over the Services as contemplated below, immediately upon USP’s identification or the Service Provider's notification of the occurrence of any event which USP considers in its sole discretion, to be an event which may affect the continuity of the Services.
	2. For purposes of this Clause [25](#page38) USP may (at its option), either itself or by the procurement of an alternate Third Party service provider, temporarily take over the provision of the Services until such time as USP is able to make permanent alternate arrangements for the provision of the Services, which right will apply for a period of no more than one hundred and eighty (180) days from the date that USP temporarily takes over the provision of the Services. The Service Provider will, upon the request of USP, fully co-operate with and assist USP in the performance of the Services during any such temporary takeover of the Services by USP.
	3. To the extent that USP exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a Third Party service provider renders some or all of the Services pursuant to the provisions of Clause [25.2](#page39) above, the Service Provider will not be entitled to any fees during the period for which USP or the Third Party assumes the Services. USP will be obliged to also assume, for that period, any direct costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by USP in accordance with this Clause, including the salary costs for the Service Provider personnel that USP may require to assist it in so rendering the Services or part thereof. USP will not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility for the conduct of the Service Provider's business operations or the employment of any of the Service Provider’s personnel, in terms of this Clause.

# RELATIONSHIP BETWEEN THE PARTIES

* 1. The Service Provider is an independent contractor, and under no circumstances will it be a partner, joint venture partner, agent or employee of USP in the performance of its duties and responsibilities pursuant to this Agreement.
	2. All personnel used by the Service Provider will be the Service Provider’s employees, contractors or agents, and the entire management, direction and control of all such Persons will be the responsibility of the Service Provider.

# DISPUTE RESOLUTION

* 1. If a dispute between the Parties arises out of or is related to this Agreement, the Parties will meet and negotiate in good faith to attempt to resolve the dispute. If, after ten (10) Business Days from the date upon which the dispute was declared by a Party by written notice, the dispute is not resolved, the matter will be determined in accordance with the provisions set out below.
	2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection with this Agreement will be finally resolved by arbitration in accordance with the Rules of the Arbitration Act of the Country where the services are to be provided.
	3. This Clause [27](#page40) will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
	4. Unless specifically otherwise provided for in this Agreement, neither Party will be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party will in such circumstances continue to comply with their obligations in terms of this Agreement.

# NON-EXCLUSIVITY

* 1. The Service Provider is appointed to provide the Services to USP on a non-exclusive basis and USP will not be precluded from obtaining Services that may be similar or identical to the Services from any other service provider.
	2. Nothing contained herein will in any way be construed or constitute a guarantee in favor of the Service Provider that the Service Provider will receive any work or contract from USP for Services in the future, whether under this Agreement or otherwise.

# ADDRESSES

* 1. Each Party chooses the addresses set out opposite its name in this agreement as its address to which all notices and other communications must be delivered for the purposes of this Agreement and at which all documents in legal proceedings in connection with this Agreement must be served.
	2. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be valid and effective only if in writing and sent to a Party’s chosen address or phone number, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s domicilium.
	3. Any Party may by written notice to the other Party, change its chosen address or phone number to another address or phone number provided that the change will become effective on the tenth (10th) Business Day after receipt or deemed receipt of the notice by the addressee; and any change in a Party’s domicilium will only be to an address in the Country where the services are to be provided, which is not a post office box.
	4. Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at its chosen address or delivered by hand to a responsible Person during ordinary business hours at its chosen address will be deemed to have been received in the case of prepaid registered post on the fifth (5th) Business Day after posting and in the case of delivery by hand, on the day of such delivery unless the contrary is proved.
	5. The Parties record that whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement, may be given or concluded via e-mail.

# CONFIDENTIALITY

* 1. The Service Provider will execute USP’s standard Oath of Secrecy (as amended from time to time), and undertakes to ensure that all of its personnel involved in performing the Services in terms of this Agreement, or who may have access to USP’s Confidential Information, sign and are bound by USP’s standard Oath of Secrecy (as amended from time to time), prior to such personnel entering or gaining access to any of USP’s premises.
	2. The Service Provider undertakes not to commit any act which in any manner prejudices USP’s Confidential Information, including any Third Party information which is in the custody of USP. The Service Provider further undertakes to implement measures to ensure that its personnel who have not signed USP’s Oath of Secrecy will not have access to USP’s Confidential Information or any of USP’s premises.
	3. The Service Provider may with USP’s prior written consent and subject to the provisions of this Clause [30](#page42) disclose only such information as may be legally required by a regulatory or other competent authority.
	4. Each Party hereby undertakes for the continuance of this Agreement and for a period of five years from the termination of this Agreement to the other to;
		1. Keep confidential all information (written, including information contained in electronic format or oral) concerning the business affairs of the other that it shall have obtained or received from the other Party ("the information"); and not, without the other's written consent, disclose the information in whole or in part to any other Person save to its employees involved in the implementation of this Agreement, and then only on a “need-to-know” basis.

# MISCELLANEOUS

* 1. This document contains the entire Agreement between the Parties in regard to the subject matter hereof.
	2. No Party will be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this Agreement whether it induced the contract and/or whether it was negligent or not.
	3. No variation, amendment or consensual cancellation of this Agreement or any provision or term hereof and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement will be binding or have any force and effect unless reduced to writing and signed by or on behalf of the Parties. Any such extension, waiver or relaxation or suspension which is so given or made will be construed as relating strictly to the matter in respect whereof it was made or given.
	4. No failure by any Party to enforce any provision of this Agreement will constitute a waiver of such provision or affect in any way such Party’s right to require the performance of such provision at any time in the future, nor will a waiver of a subsequent breach nullify the effectiveness of the provision itself.
	5. Except as provided for under this Agreement, neither Party will cede nor assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
	6. If any Clause or term of this Agreement becomes invalid, unenforceable, defective or illegal for any reason whatsoever, then the Parties will negotiate in good faith to replace such Clause with a Clause which is valid, enforceable and legal but maintaining the essential provisions of that Clause to the extent possible, provided that if the Parties should fail to reach Agreement on such replacement Clause, then the remaining terms and provisions of this Agreement will be deemed to be severable there from and will continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of this Agreement.
	7. The rule of construction that an agreement will be interpreted against the Party responsible for the drafting of the Agreement will not apply.

# PUBLIC DISCLOSURES

* 1. No advertising or publicity matter of either Party having or containing any reference to the other Party, or in which the name of the other Party is mentioned (except announcements intended solely for internal distribution or to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party), will be made by or for a Party without first obtaining written approval from the other Party.
	2. The Parties may not use each other’s logos, or any other service marks or trademarks which are intellectual property of the other Party.

# GOVERNING LAW AND JURISDICTION

* 1. The provisions of this Agreement will be governed by and construed in accordance with the Laws of the Country where the services are to be provided.
	2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Court of the Country where the services are to be provided, in regard to all matters arising from this Agreement.

# COSTS

* 1. Save as may be otherwise provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

**Signed at …………… by and on behalf of USP-**

|  |  |  |
| --- | --- | --- |
| **1.** |  | **Chief Operating Officer** |
|  | **Signature**  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
|  | **Date signed** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **2.** |  |  **Procurement Manager** |
|  | **Signature** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
|  | **Date signed** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**3. Name of Service Provider: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address of Service Provider**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **Signature of Service Provider Representative:**  |  |
|  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Full Name and Capacity:** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Who warrants his authority thereto** |  |
| **Witnesses** | **Date signed** |
| **1.** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **2.** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

ANNEXURE A – Equipment List for Maintenance Services

**ANNEXURE B - Preventative Maintenance Schedule**

ANNEXURE C – BIDDERS PROPOSAL

Technical Submission

Price Proposal

Mandatory Documentation excluding financials

Any negotiation documentation

ANNEXURE D - SERVICE PROVIDERS PROPOSED PERSONNEL

ANNEXURE E – LETTER OF AWARD